

C.R.P.(PD)Nos.737 to 739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.737 to 739 of 2017
and C.M.P.No.3643 of 2017

M/s.Kiwik Patch Limited

Represented by its Chief Financial

Officer/Authorised Signatory

Mr.NDV Karthikeyan

B5, Thiru.Vi.Ka.Industrial Estate

Guindy, Chennai-600 032.

.. Petitioner

in all the three CRPs.

Vs.

Dinesh Kr.Dargar

Proprietor

Maheswari Trading Company

Muralidhar Rathi Lane

Muchipara P.O.

Purulia-723 101.

.. Respondent

in all the three CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.12.2016 made in I.A.Nos.10266 to 10268 of 2016 in O.S.No.295 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

In all CRPs.

For Petitioner : Mr.K.K.Muralitharan

For Respondent : Mr.S.C.Shah
for M/s.Shah and Shah

COMMON ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petitions are filed against the fair and decretal order dated 23.12.2016 made in I.A.Nos.10266 to 10268 of 2016 in O.S.No.295 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai.

2.The petitioner is plaintiff and respondent is defendant in O.S.No.295 of 2014 on the file of the XIII Assistant Judge, City Civil Court, Chennai. The petitioner filed the said suit for recovery of money.

The respondent filed written statement and is contesting the suit. The petitioner let in evidence and closed his side. The respondent filed proof affidavit as D.W.1 and subsequently, he did not appear for cross-examination. The learned Judge closed the evidence of respondent and posted the case on 14.07.2016 for judgment. At that stage, the respondent filed three applications in I.A.Nos.10266 to 10268 of 2016 to re-open, re-call D.W.1 and defer judgment in O.S.No.295 of 2014.

3.According to the respondent, the suit was adjourned to 07.06.2016. But his counsel mistakenly noted the date of hearing as 17.06.2016. In view of the same, there was no representation for the respondent on 07.06.2016 and 13.06.2016 to 22.06.2016. He was suffering from illness, met his Advocate only on 11.07.2016, then filed applications and prayed for allowing the I.As.

4.The petitioner filed counter affidavit and resisted the same.

According to the petitioner, on earlier four or five occasions, at the

request of the respondent, the very same relief was granted and only to drag on the proceedings, the respondent did not appear and has come out with present applications. The common affidavit filed in support of the applications is filed by one Ketan R.Gandhi, who is alleged to be an authorised representative of the respondent. He has not filed any Power of Attorney and the applications filed by a stranger to the suit are not maintainable and prayed for dismissal of the said applications.

5.The learned Judge held that D.W.1 is not cross-examined and even though the reason given by the respondent is not sufficient, in order to give opportunity to the respondent in the interest of justice, allowed all the three I.As. imposing cost of Rs.500/-.

6.Against the said fair and decretal order dated 23.12.2016 made in I.A.Nos.10266 to 10268 of 2016 in O.S.No.295 of 2014, the petitioner has come out with the present three Civil Revision Petitions.

7.The learned counsel appearing for the petitioner reiterated the averments made in the counter affidavit and contended that the learned Judge failed to consider the preliminary objection that the applications filed by the stranger are not maintainable. The learned Judge also failed to see that on earlier occasions also, the respondent was given opportunity to put forth his case. The learned Judge having held that reason given by the respondent is not sufficient, ought to have dismissed the applications. The learned Judge failed to see that this is the second time the respondent has come out with the present I.As., when the suit was posted for judgment and prayed for allowing the Civil Revision Petitions.

8.The learned counsel appearing for the respondent contended that as per the order of the learned Judge, the respondent has paid cost and counsel for the petitioner has also received the same. Having received the cost as recorded by the learned Judge, the present Civil Revision Petitions are not maintainable and prayed for dismissal of the Civil Revision Petitions.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

10.From the materials available on record, it is seen that the respondent filed the present applications, when the suit was posted for judgment. The reason given by the respondent is that his counsel wrongly noted down the date of hearing as 17.06.2016 instead of 07.06.2016. The suit was called on 07.06.2016, 13.06.2016, 22.06.2016 and thereafter only the suit was posted for judgment. The respondent has not given any reasons for his counsel or representative not attending the Court, when the case was called on 07.06.2016, the alleged date of hearing on 17.06.2016 and for not verifying the Court records to find out the next date of hearing. He did not appear on 22.06.2016. The learned Judge considering the above averments, held that the reason given by the respondent is not sufficient, but allowed the applications in order to give opportunity to the respondent to proceed his case on merits. The learned

Judge allowed all the three I.As. on payment of cost of Rs.500/- to give opportunity to the respondent to be present himself for cross-examination. The cost awarded by the learned Judge is too meagre.

11.Considering the fact that the respondent as D.W.1 is yet to be cross-examined, the order of the learned Judge giving opportunity to the respondent is in the interest of justice and at the same time, it is to be noted that the cost awarded by the learned Judge is too meagre and also considering the materials in its entirety, a sum of Rs.10,000/- (Rupees Ten thousand only) is awarded as cost for allowing all the three I.As. in addition to Rs.500/- imposed by the learned Judge. The respondent is directed to pay Rs.10,000/- as cost to the counsel for the petitioner Mr.K.K.Muralitharan, within a period of two weeks from the date of receipt of a copy of this order. On such payment, the impugned order of the learned Judge will be confirmed. If the respondent fails to pay the cost of Rs.10,000/- within the time limit granted by this Court, the impugned order of the learned Judge will be automatically set aside.

12.The learned counsel for the petitioner submitted that the suit is of the year 2014 and it was posted for cross-examination of D.W.1. In view of the same, the learned Judge is directed to dispose of the suit as expeditiously as possible, in any event, not later than six months.

13.With the above directions, all the three Civil Revision Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

03.09.2021

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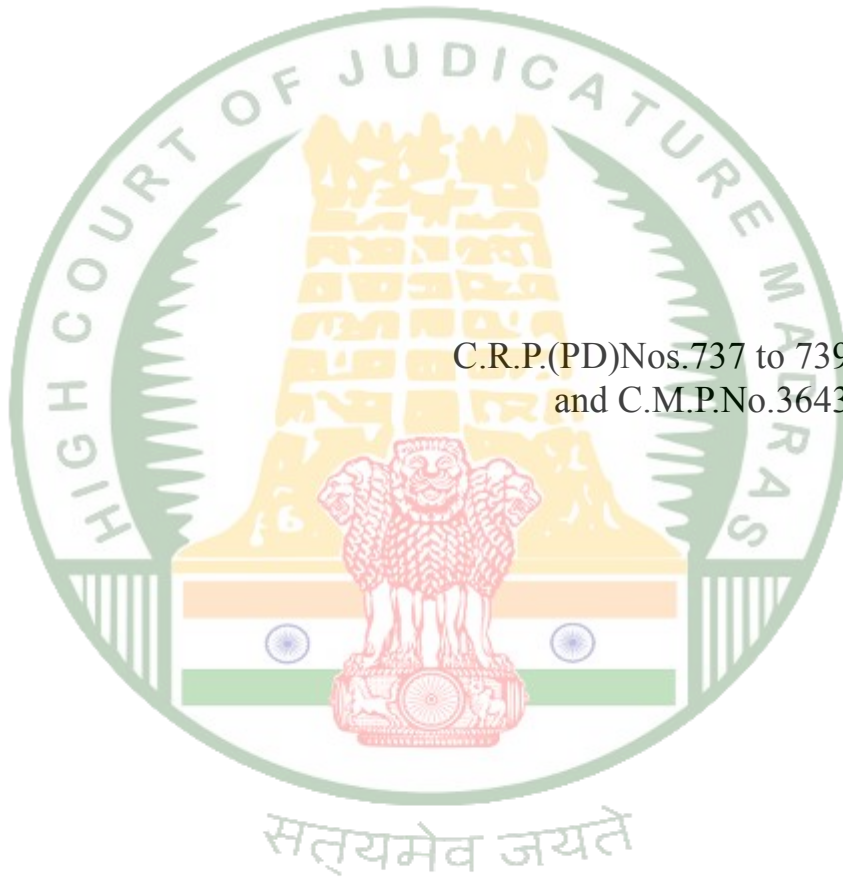
XIII Assistant Judge
City Civil Court
Chennai.

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V.M.VELUMANI, J.

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